IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 63 of 1998

in

SPECIAL CIVIL APPLICATION No 108 of 1996

with

LETTERS PATENT APPEAL No 85 of 1998

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE C.K.THAKKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

MAHENDRABHAI KANTIBHAI PATEL

Appearance:

1. LETTERS PATENT APPEAL No. 63 of 1998

Ms. Manisha Lavkumar, Assistant GOVERNMENT PLEADER, for Appellant

MR AJ PATEL for Respondent No. 1

RULE SERVED for Respondent No. 3

2. LETTERS PATENT APPEAL No 85 of 1998

Ms.Manisha Lavkumar, Assistant GOVERNMENT PLEADER, for Appellant

MR AJ PATEL for Respondent No. 1, 2, 3

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI

and

MR.JUSTICE C.K.THAKKAR

Date of decision: 15/02/2000

ORAL JUDGEMENT: (Per C.K. Thakkar, J.)

When the Let....

for final hearing, our attention was invited by the learned counsel for the parties to orders passed by a Division Bench in several matters, including L.P.A.No.151 of 1996, decided on July 2, 1999, as also Letters Patent Appeal No.627 of 1997, decided on November 24, 1999. In L.P.A.No.627 of 1997, the attention of the Court was invited to other orders passed in such matters and a relevant and important fact that the provisions of Section 117 of the Gujarat Town Planning and Urban Development Act, 1976 came to be repealed.

In view of the fact that the provisions of Section 17 stood repealed, the Division Bench observed in paragraph 7 as under :-

> "... 7. The orders passed by Division Bench in Letters Patent Appeal No.151 of 1996 which was filed against judgment passed in Special Civil Application No.7735 of 1995 as well as Civil Application No.7798 of 1996 which was filed in Letters Patent Appeal No.151 of 1996 make it manifest that the construction which was raised by the respondents on the disputed land would not be affected in any manner, even if the appeal is to be allowed. There is no manner of doubt that the appeal involves interpretation of Section 117(a) of the Gujarat Town Planning and Urban Development Act, 1976. As section 117(a) of the Gujarat Town Planning and Urban Development Act, 1976 is deleted by section 21 of the Gujarat Town Planning and Urban Development (Amendment) Act, 1999, now it

> is not necessary for the Court to interpret the said provision and the issue involved in the appeal has become academic. It is ruled by the Supreme Court in several reported decisions that the Court should not decide academic matters. Under the circumstances, we are of the opinion that the appeal has become infructuous and deserves to be disposed of accordingly ...."

In our opinion, in view of the fact that Section 117 of the Act has been repealed and the Division Bench has passed similar orders, in our view also, the question, which is sought to be raised in the present Letters Patent Appeals, has become academic. It is, therefore, not necessary to answer it and without expressing final opinion, in our view, the Letters Patent Appeals deserve to be disposed of. They are accordingly disposed of as having become infructuous. The appeals are accordingly dismissed. No order as to costs.

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(apj)